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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/697,541

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EXAMINER

MERCHANT, SHAHID R

ART UNIT

PAPER NUMBER

3694

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/697,541	<b>Applicant(s)</b> BUCKWALTER ET AL.	
	<b>Examiner</b> SHAHID R. MERCHANT	<b>Art Unit</b> 3694	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 January 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 1-40 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 49-56 is/are allowed.
- 6) ☒ Claim(s) 41,42,44-48 and 57 is/are rejected.
- 7) ☒ Claim(s) 43 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 11, 2010 has been entered.

### ***Status of the Claims***

2. This action is in response to the request for continued examination filed on January 11, 2010.

- Claims 1-57 are pending.
- Claims 1-14, 20-27, 35 and 39 have been cancelled.
- Claims 15-19, 28-34, 36-38 and 40 have been withdrawn.
- Claims 41-57 are new claims to be examined.

### ***Response to Arguments***

3. Applicant's arguments filed January 11, 2010 have been fully considered but they are not persuasive. Applicant argues that Exchange Act discusses requiring a broker to disclose to its customer "in writing at or before the completion of the transaction, when the customer's order for listed options was executed at a price inferior to a better

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punished quote and the better punished quote available at the time" (Exchange Act, V, page 31, paragraph 3) and therefore does not disclose "... utilizing the received option market data to identify at least one of trade-through transaction relevant to the option limit order and a trade-at transaction relevant to the option limit order, wherein the at least one of a trade-through and a trade-at transaction occurs at a better price than the limit price for the option limit order..." as recited in independent claim 41. Examiner disagrees. Examiner reiterates that Exchange Act consists of References U and V. Exchange Act discloses wherein the at least one of a trade-through and a trade-at transaction occurs at a better price than the limit price for the option limit order on page 23 as shown below.

The first of these columns is the average "effective" spread (in contrast to the average "realized" spread that was discussed above). Average effective spread is defined in paragraph (a)(2) of the Rule and is calculated by comparing the execution price of an order with the midpoint of the consolidated BBO at the time of order receipt. The larger the effective spread the higher the transaction costs for market and marketable limit orders in that security. The average effective spread is a comprehensive statistic that summarizes the extent to which market and marketable limit orders are given price improvement, executed at the quotes, and executed outside the quotes. As such, it is a useful single measure of the overall liquidity premium paid by those submitting market and marketable limit orders to a market center.

The final eight columns of information required for market and marketable limit orders essentially break out the major determinants of execution quality that are summarized in the average effective spread. They also are intended to provide a substantial basis to weigh any potential trade-offs between execution speed and execution price. Orders are classified based on whether they were "executed with price improvement," "executed at the quote," or "executed outside the quote," as defined in paragraphs (a)(10) through (a) (12). For shares executed with price improvement and shares executed outside the quote, market centers will disclose the number of shares, the average amount per share of price improvement or price improvement, and the average speed of execution. For shares executed at the quote, market centers will disclose the number of shares and the average speed of execution. Not only will these statistics help broker-dealers and investors evaluate where to find the fastest executions at the best prices, they also will indicate the extent to which market centers are able to execute larger orders at prices equal to or better than the quotes. They thereby indicate the volume of liquidity available at different market centers.

4. Regarding the limitation "generating via a processor an alert...option limit order," Nordlicht discloses the concept of setting alerts for various events or transactions like execution and rejections (see paragraph 135). A trade-through and trade-at transaction are interpreted to be execution of orders, and therefore Nordlicht teaches the limitation.

***Claim Objections***

5. Claim 43 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 46 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Regarding claim 46, Applicant recites the limitation, “wherein the at least one of a trade-through and a trade-at transaction occurs at a second exchange different from a first exchange to which the option limit order was forwarded.” Examiner could not find in any previous step where the option limit order was forwarded anywhere like a first exchange. In claim 41, there is only the step of receiving a plurality of option limit orders and then identifying other transactions relevant to the option limit order. There is no step of forwarding the option limit order to a first exchange in claim 41.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 41-42, 44-45, 47-48 and 57 rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht et al., U.S. Patent Application Publication 2002/0194115 (see PTO-892, Ref. A) in view of Securities Exchange Act of 1934, Rules 11Ac1-5 and 11Ac1-7 (see PTO-892, Refs. U and V). Hereinafter Exchange Act.

11. As per claim 41, Nordlicht teaches the method for monitoring and evaluating an option limit order, comprising:

receiving an option limit order, the option limit order including information identifying a customer, a desired option, and indicating a limit price for the option limit order (see paragraph 85);

receiving a real-time feed of option market data (see paragraphs 9-15);

and

generating via a processor an alert, the alert including identity of the identified at least one of trade-through transaction relevant to the option limit order and trade-at transaction relevant to the option limit (see paragraph 135).

Exchange Act teaches utilizing the received option market data to identify at least one of trade-through transaction relevant to the option limit order and a trade-at transaction relevant to the option limit order, wherein the at least one of a trade-through

and a trade-at transaction occurs at a better price than the limit price for the option limit order (see Ref. U, pages 22-23). Rules 11Ac1-5 of the Securities Exchange Act of 1934 focus on various information that must be provided to a customer regarding their orders. Rule 11Ac1-5 requires market centers to make available to the public monthly electronic reports that include statistical measures of execution quality.

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Nordlicht and Exchange Act to identify a trade-through transaction relevant to an option order because it is a required disclosure by the U.S. Securities and Exchange Commission and it allows a customer to monitor the quality of execution by their broker (see Ref. U, page 30).

12. As per claim 42, Nordlicht and Exchange Act teach claim 41 as described above. Nordlicht further teaches using the identified at least one of a trade-through transaction and a trade-at transaction to tabulate at least one of trade-through data and trade-at data for a plurality of option limit orders; tabulating fulfillment data for the plurality of option limit orders placed by the customer; and comparing the tabulated fulfillment data to the tabulated at least one of trade-through data and trade-at data (see paragraphs 58, 82-83, 86, 137, 139 and Figure 7A).

13. As per claim 44, Nordlicht and Exchange Act teach claim 41 as described above. Nordlicht further teaches wherein said information identifying a desired option further includes: a type of said order, a security underlyer, an option expiration date, and a size of said order (see paragraphs 3 and 85).

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14. As per claim 45, Nordlicht and Exchange Act teach claim 41 as described above.

Nordlicht further teaches disregarding the identified at least one of trade-through transaction and a trade-at transaction in response to a market condition in effect at a time of the identified at least one of a trade-through transaction and a trade-at transaction (see paragraph 86).

15. As per claim 47, Nordlicht and Exchange Act teach claim 41 as described above.

Nordlicht further teaches comprising time stamping the received option limit order (see paragraph 74).

16. As per claim 48, Nordlicht and Exchange Act teach claim 41 as described above.

Nordlicht further teaches utilizing the real time feed of option market data and the alert information to generate an analysis report (see paragraphs 137-139).

17. Claim 57 recites similar limitations to claim 41 and thus rejected using the same art and rationale in the rejection of claim 41 as set forth above.

### ***Allowable Subject Matter***

18. Claims 49-56 allowed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAHID R. MERCHANT whose telephone number is (571)270-1360. The examiner can normally be reached on First Friday Off.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shahid R Merchant/  
Examiner, Art Unit 3694